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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 HOMER E. HAWKINS,) NO. EDCV 09-1862 JHN (SS)
12 Plaintiff,)
13 v.) **MEMORANDUM AND ORDER DISMISSING**
14 GARY SANDOR, et al.,) **FOURTH AMENDED COMPLAINT WITH LEAVE**
15 Defendants.) **TO AMEND**
16 _____)
17

18 On July 13, 2010, Plaintiff, a state prisoner proceeding pro se,
19 filed a Fourth Amended Complaint ("Fourth Amended Complaint" or "FAC")
20 pursuant to 42 U.S.C. § 1983 against various state employees. For the
21 reasons stated below, the Fourth Amended Complaint is dismissed with
22 leave to amend.
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ALLEGATIONS OF THE COMPLAINT

The Fourth Amended Complaint names as defendants Gary Sandor, identified as Acting Warden of Ironwood State Prison;¹ Ronald W. Thomas, M.D., "Chief of Staff/Physician & Surgeon"; Nickolas Lind, M.D., "Chief of Staff/Physician & Surgeon." (FAC at 3). Defendants are sued in their individual capacities only. (Id.).

Plaintiff alleges that Defendant Sandor is liable under Section 1983 for his "failure to continue immediate safety of satellite kitchen of rodent feces & urine in our trays, lunches: plus medical and dental safety." (FAC at 3). He further alleges that "this warden was in violation by not investigating the reason why modification or accommodation that [sic] was requested." (FAC at 5). Plaintiff asserts that Defendant Sandor "has the overall functional responsibility for the implementation of the procedure," although Plaintiff does not clarify what procedure he is referring to. (Id.). Plaintiff claims that at Ironwood State Prison, the "living conditions are still poorly [sic], because there are still (Rodent's) in the kitchen and that the "FECES & URINE" are still being seen in the Trays and lunches as of May 2010 . . . The Warden is concert of (NOT) improvement of the cleanliness and safety of the inmate's (FOOD) & (WATER) sources." (FAC at 5).

Plaintiff further alleges that he has suffered "reprisals" due to the current lawsuit. Apparently, Plaintiff requested a transfer to a

¹ It appears that Defendant Sandor is the former Acting Warden of Ironwood State Prison.

1 "medical institution" and asserts that the denial of this transfer
2 request was retaliation. (FAC at 6²).

3
4 Plaintiff asserts that Mr. Sandor is named as a defendant because
5 of the denial of the transfer request and "only the Warden or Chief
6 Deputy Warden" could investigate under Category-1 and Category 2 of (CDC
7 Form 1824 & Inmate Appeal 602, and CDC. Form 1858). (Id.). Plaintiff
8 fails to explain how the Warden's "investigative" role relates to the
9 transfer issue. Plaintiff also alleges that he was forced to go to
10 "outside hospitals" because he was given the "wrong kind of medication"
11 and that the medicine made him "bleed within side my body." (Id.).
12 Plaintiff has lengthy and rambling allegations pertaining to the medical
13 care received at Ironwood. (FAC at 6-8). Plaintiff seeks monetary
14 damages of ten million dollars and injunctive relief to be "free from
15 cruel and unusual punishment." (FAC at 10).

16 17 DISCUSSION

18 19 The Fourth Amended Complaint Must Be Dismissed With Leave To Amend

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21 Congress has mandated that district courts perform an initial
22 screening of complaints in civil actions where a prisoner seeks redress
23 from a governmental entity or employee. 28 U.S.C. § 1915A(a). This
24 Court may dismiss such a complaint, or any portions thereof, before
25 service of process if it concludes that the complaint (1) is frivolous

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27 ² Plaintiff misnumbered his complaint. The Court refers to the
28 page numbers that would appear on the pages of the complaint had it been
consecutively numbered.

1 or malicious, (2) fails to state a claim upon which relief can be
 2 granted, or (3) seeks monetary relief from a defendant who is immune from
 3 such relief. 28 U.S.C. § 1915A(b); see also Lopez v. Smith, 203 F.3d
 4 1122, 1126 & n.7 (9th Cir. 2000) (en banc).

5
 6 When a plaintiff appears pro se in a civil rights case, the court
 7 must construe the pleadings liberally and afford the plaintiff the
 8 benefit of any doubt. Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d
 9 621, 623 (9th Cir. 1988). In giving liberal interpretation to a pro se
 10 complaint, the court may not, however, supply essential elements of a
 11 claim that were not initially pled. Pena v. Gardner, 976 F.2d 469, 471-
 12 72 (9th Cir. 1992). A court must give a pro se litigant leave to amend
 13 the complaint unless it is "absolutely clear that the deficiencies of the
 14 complaint could not be cured by amendment." Karim-Panahi, 839 F.2d at
 15 623 (internal quotation marks omitted).

16
 17 The Court must dismiss the Fourth Amended Complaint due to defects
 18 in pleading. However, the Court grants Plaintiff leave to amend.³

19 _____
 20 **Plaintiff Fails To State A Claim Against Warden Sandor**

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 22 _____Plaintiff has failed to state a claim against Warden Sandor.
 23 Government officials may not be held liable for the unconstitutional
 24 conduct of their subordinates under a theory of respondeat superior.
 25 Ashcroft v. Iqbal, ___ U.S. ___, 129 S. Ct. 1937, 1948, 173 L. Ed. 2d 868

26 _____
 27 ³ Magistrate Judges may dismiss a complaint with leave to amend
 28 without approval of the district judge. See McKeever v. Block, 932 F.2d
 795, 798 (9th Cir. 1991).

1 (2009). "Because vicarious liability is inapplicable to Bivens and §
2 1983 suits, a plaintiff must plead that each Government-official
3 defendant, through the official's own individual actions, has violated
4 the constitution." Iqbal, 129 U.S. at 1948.

5
6 A warden may not be held liable for conditions at an institution
7 simply because he supervised others at the institution. Instead, the
8 warden may only be held personally liable if he "play[ed] an affirmative
9 part in the alleged deprivation of constitutional rights." King v.
10 Atiyeh, 814 F.2d 565, 568 (9th Cir. 1987). In order to be held liable,
11 a supervising officer has to personally take some action against the
12 Plaintiff or "set in motion a series of acts by others . . . which he
13 knew or reasonably should have known, would cause others to inflict the
14 constitutional injury." Larez v. City of Los Angeles, 946 F.2d 630, 646
15 (9th Cir. 1991) (internal quotations omitted). Thus, as to each
16 defendant Plaintiff wishes to hold responsible, he must allege specific
17 facts showing what that person did or did not do, when and where, and how
18 each defendant's action or inaction caused a violation of Plaintiff's
19 civil rights.

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21 The complaint must contain enough factual matter, accepted as true,
22 to "state a claim to relief that is plausible on its face." Iqbal, 129
23 S. Ct. at 1949 (internal quotations and citations omitted). Even
24 liberally construed, Plaintiff's Fourth Amended Complaint fails to meet
25 this standard for a claim against Warden Sandor. Plaintiff's allegations
26 are confusing and nonsensical. The allegations fail to show how the
27 Warden, through his personal conduct, has violated the Constitution.

1 the standards described above for pleading a civil rights claim against
2 an individual defendant.

3
4 It is not necessary for Plaintiff to cite case law or include legal
5 argument. Moreover, irrelevant exhibits or other extraneous documents
6 are not necessary for Plaintiff to include with his complaint.

7
8 Plaintiff is explicitly cautioned that failure to timely file a
9 Fifth Amended Complaint, or failure to correct the deficiencies described
10 above, will result in a recommendation that this action be dismissed for
11 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).
12 Plaintiff is further advised that, if he does not wish to pursue this
13 action, **he may voluntarily dismiss it by filing a notice of dismissal in**
14 **accordance with Federal Rule of Civil Procedure 41(a)(1). A sample**
15 **notice is attached to this order as well.**

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17 DATED: July 30, 2010_____

18 _____
19 **/s/**

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21 SUZANNE H. SEGAL
22 UNITED STATES MAGISTRATE JUDGE
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